

## Department of State



CONFIDENTIAL 132

PAGE ØI STATE Ø96469

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INFO OCT-01 EUR-20 EA-11 INT-08 10-12 COA-02 COM-08 E-11

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PA/HO Department of State
E.O. 12958, as amended
July 12, 2005

CONFIDENTIAL



## Department of State

## TELEGRAM

CONFLOENTIAL

PAGE Ø2 STATE Ø96469

CONFIDENTIAL STATE 096469

C O R R E C T E D C O P Y (OMISSION LINE 6 PARA 13)

SUBJECT: LAW OF THE SEA (LOS) - INTERIM POLICY

REF: A-439

SUMMARY. WE HAVE PREVIOUSLY PROVIDED POSTS WITH BACKGROUND INFO ON VARIOUS LOS ISSUES. PRESENT MESSAGE SUPPLEMENTS THE INFO. IT DEALS WITH "INTERIM POLICY" (I.E., POLICY FOR DEALING WITH DEEP SEABED EXPLORATION/EXPLOITATION PENDING ESTABLISHMENT OF A NEW INTERNATIONAL REGIME.) DEPT REQUEST ACTION ADDRESSES TO DISCUSS INTERIM POLICY INFO WITH HOST GOVTS AND TO REPORT REACTIONS. SPECIAL CONSULTATIONS WITH WASHINGTON EXPERTS ARE SUGGESTED TO COVER INTERIM POLICY AND OTHER LOS ISSUES. END SUMMARY

- 1. DEVELOPMENTS IN UN SEABED COMMITTEE CONCERNING EXPLORA-TION AND EXPLOITATION OF SEABED MINERAL RESOURCES PENDING NEGOTIATION OF FINAL LOS TREATY IN 1973 ARE REACHING A CRITICAL STAGE.
- AS REPORTED REFAIR, PREPARATORY WORK FOR LOS CONFERENCE HAS BEEN QUITE SLOW. DELAYING TACTICS BY SEVERAL COUNTRIES HAVE BEEN SUCCESSFUL IN KEEPING LOS PREPCOMM FROM MAKING AN SUBSTANTIAL PROGRESS. OF THREE SUBCOMMITTEES ONLY FIRST (SEABED REGIME) HAS BEGUN WORK WHICH MAY LEAD TOWARD DRAFTING OF TREATY ARTICLES ... SUBCOMMITTEE II HAS BEEN PARALYZED BY PROCEDURAL DISPUTES AND BY PREPARATION OF "LIST OF ISSUES" WHICH MIGHT FORM BASIS FOR CONFERENCE LACCORDINGLY SUBCOMMITTEE II HAS NOT BEGUN SUBSTANTIAL WORK ON FISHERIES, TERRITORIAL SEA OR STRAITS. SUBCOMMITTEE III WHICH WILL DEAL WITH MARINE POLLUTION AND SCIENTIFIC RESEARCH HAS GOTTEN OFF TO VERY SLOW START. NEVERTHELESS, MANY COUNTRIES! STATED POSITIONS ARE BECOMING INCREASINGLY REFINED AND PATTERNS ARE BEGINNING TO DEVELOP. ANY DELAY NOW WILL PROBABLY CAUSE UN GENERAL ASSEMBLY IN FALL TO DELAY FORMAL CALLING OF LOS CONFERENCE IN 1973. SHOULD THAT OCCUR. FULFILLMENT OF US OCEANS POLICY BY INTERNATIONAL CONVENTION WOULD ALSO BE DELAYED.

CONFIDENTIAL



CONFEDENTIAL

PAGE Ø3 STATE 096469

FULFILLMENT OF THIS POLICY IS DESIRED, BUT ONLY ON TERMS WHICH PROTECT NATIONAL INTERESTS, INCLUDING THOSE OF SECURITY.

3. SUBJECT OF INTERIM POLICY EXPLAINED BELOW, IS ONE OF SEVERAL ISSUES WHICH HAS POTENTIAL FOR CAUSING SUBSTANTIAL DELAY IN WORK OF COMMITTEE AND WE WILL WANT TO PLAN CARE-FULLY TO AVOID PITFALLS, HENCE, WE ARE PROVIDING CONSIDERABLE BACKGROUND INFORMATION AND SOME SUGGESTED ACTION IN HOPES THAT CAREFUL CONCERTED ACTION WILL DENY CERTAIN COUNTRIES OPPORTUNITY TO INHIBIT PROGRESS OF COMMITTEE THIS SUMMER.

IN MAY 23, 1970 PRESS STATEMENT, PRESIDENT NIXON SAID "I DO NOT ... BELIEVE IT IS EITHER NECESSARY OR DESIRABLE TO TRY TO HALT EXPLORATION AND EXPLOITATION OF THE SEABEDS BEYOND A DEPTH OF 200 METERS DURING NEGOTIATING PROCESS. ACCORDINGLY : I CALLSON OTHER NATIONS TO JOIN US IN AN INTERIM POLICY A SUGGEST THAT ALL PERMITS FOR EXPLORATION AND EXPLOITATION OF SEABEDS BEYOND 200 METERS BE ISSUED SUB JECT TO INTERNATIONAL REGIME TO BE AGREED UPON. THE REGIME SHOULD ACCORDINGLY INCLUDE DUE PROTECTION FOR INTEGRITY OF INVESTMENTS MADE IN NTERIM PERIOD. A SUBSTANTIAL PORTION OF REVENUES DERIVED BY A STATE FROM EXPLORATION BEYOND 200 METERS DURING THIS INTERIM PERIOD SHOULD BE TURNED OVER TO AN APPROPRIATE INTERNATIONAL DEVELOPMENT AGENCY FOR ASSISTANCE TO DEVELOPING COUNTRIES. I WOULD PLAN TO SEEK APPROPRIATE CONGRESSIONAL ACTION TO MAKE SUCH FUNDS AVAILABLE AS SOON AS A SUFFICIENT NUMBER OF OTHER STATES ALSO INDICATE THEIR WILLINGNESS TO JOIN THIS INTERIM POLICY . "

SPRIOR TO PRESIDENT'S MAY 23 STATEMENT, UN GENERAL ASSEMBLY PASSED RESOLUTION 2574-D (KNOWN AS MORATORIUM RESOLUTION WHICH DECLARES THAT, PENDING ESTABLISHMENT OF AFOREMENTIONED INTERNATIONAL REGIME:

TAL STATES AND PERSONS PHYSICAL AND JURIDICAL ARE FOUND TO REFRAIN FROM ALL ACTIVITIES OF EXPLOITATION OF RESOURCES OF AREAS OF SEABED AND OCEAN FLOOR, AND SUBSOIL THEREOF, BEYOND THE LIMITS OF NATIONAL JURISDICTION.

CONFIDENTIAL



### CONFIDENTIAL

STATE 096469

PAT OF THAT AREA OR ITS RESOURCES (B) NO CLAIM TO SHALL BE RECOGNIZED.

- US AND 27 OTHERS VOTED AGAINST MORATORIUM RES! AUSTRALIA, AUSTRIA, BELGIUM, BULGARIA, BYELORUSSIA, CANADA. CZECHOSLOVAKIA: DENMARK, FRANCE, GHANA, HUNGARY, ICELAND IRELAND, ITALY, JAPAN, LUXEMBOURG, MALTA, MONGOLIA, NETHERLANDS, NEW ZEALAND, NORWAY, POLAND, PORTUGAL, SOUTH AFRICA, UKRANIAN SSR. UK, USSR. MANY OF 35 ABSTENTIONS WERE BY AFRICAN STATES. MOST LATIN AMERICAN NATIONS WERE AMONG 52 IN FAVOR OF MORATORIUM. US REP IN VOTING MNOW INDICATED THAT RESEWOULD RETARD DEVELOPMENT OF TECHNOLOGY FOR DEEP SEABED EXPLOITATION AND THUS DELAY BENEFITS FROM SUCH EXPLOITATION TO ALL NATIONS . US REPUSAID PRACTICAL EFFECT OF RES WOULD BE TO ENCOURAGE SOME STATES THAT FEEL IT USEFUL OR NECESSARY TO ENGAGE IN EXPLORATION AND EXPLOITATION OF SEABED RESOURCES TO MOVE TOWARD UNJUSTIFI-ABLY EXPANSIVE CLAIMS OF NATIONAL JURISDICTION JUST TO REMOVE THOSE ACTIVITIES FROM SCOPE OF PROHIBITION IN RES. FINALLY) HE SAID RES IS WITHOUT BINDING LEGAL EFFECT. RE LATTER POINT. CHAIRMAN OF SEABED COMMITTEE: (AMERASINGHE) CEYLON) INDICATED SIMILAR VIEW ALTHOUGH CEYLON VOTED IN FAVOR OF RES.
- US HAS REFRAINED FOR LASTITWO YEARS FROM ISSUING EXPLOITATION LEASES BEYOND 200 METER BOUNDARY. HOWEVER. DEPARTMENT OF INTERIOR HAS ADVISED ONE US COMPANY DEEPSEA VENTURES. THAT ITS EXPLORATION FOR MANGANESE NODULES IN AN AREA 130 MILES OFFSHORE WILL BE "SUBJECT TO THE REGIME TO BE AGREED UPON IN ACCORDANCE WITH PRESIDENT'S MAY 23, 1970, STATEMENT.
- SUBSTANTIAL INTERESTS AND ACTIVITIES HAVE DEVELOPED IN COMMERCIAL DEEP SEA MINING AS LARGE QUANTITIES OF NICKEL. COPPER AND COBALT AS WELL AS OTHER METALS ARE EXPECTED TO BE DERIVED FROM MANGANESE NODULES. HUGHES TOOL IS BUILDING LARGE SHIP SPECIALLY DESIGNED TO RECOVER NODULES CONSORTIUM OF 24 COMPANIES UNDER JAPANESE AUSPICES INCLUDES NATIONALS OF US "FRANCE" WEST GERMANY, CANADA: AUSTRALIA TO AND JAPAN. COMPANIES PLAN TO CONDUCTITEST OF "CONTINUOUS LINE BUCKET DREDGING SYSEM" IN SUMMER OR FALL OF 1972. IN ADDITION, KENNECOTT COPPER AND DEEPSEA VENTURE

CONFIDENTIAL



CONFLECTIAL

PAGE Ø5 STATE Ø96469

ARE PURSUING OWN SYSTEMS OF MINING MANGANESE NODULES. BELIEVE FRANCE AND WEST GERMANY ARE GIVING FINANCIAL SUPPOR TO SOME OF THEIR COMPANIES FOR EXPERIMENTATION IN THIS FIELD.

- DEVELOPING COUNTRY SUPPORT (SEE PARA 13 BELOW) FOR A NEW MORATORIUM RESEMAY BE VERY SUBSTANTIAL MANY FEAR THAT ULTIMATE RES ON LOS ISSUES WILL PLACE MOST OF WORLDS. OFFSHORE PETROLEUM UNDER NATIONAL JURISDICTION. ACCORD-INGLY, MANY WANT TO PRESERVE BENEFITS FROM EXPLOITATION OF DEEP SEABED MANGANESE NODULES THROUGH REVENUE SHARING OR DIRECT PARTICIPATION IN EXPLOITATION. THEY FEEL IT NECESSARY TO KEEP INDUSTRIALLY ADVANCED COUNTRIES FROM STAKING OUT CLAIMS TO SEABED MINERALS WHILE LOS TREATY IS BEING NEGOTIATED. IN ADDITION, SMALL GROUP OF LATIN AMERICAN AND ARAB STATES ARE PUSHING MORATORIUM CONCEPT BECAUSE THEY FEAR THAT DEVELOPMENT OF SEABED MINERALS WILL ADVERSELY AFFECT MARKET PRICE OF LAND BASED MINERALS SUCH AS COPPER AND PETROLEUM.
- US HARD MINERALS INDUSTRY: FEARING THAT EXECUTIVE BRANCH DELAY IN IMPLEMENTING INTERIM POLICY FOR DEEP! SEABED BECAUSE OF INTERNATIONAL NEGOTIATIONS UNDERWAY. HAS RESPONDED BY PREPARING LEGISLATION (5.2801 AND SEVERAL HOUSE VERSIONS)
- LEGISLATION INTRODUCED BY SENATOR METCALF ON NOVEMBER 2, 1971 WOULD AUTHORIZE DEEP SEABED MINING BEYOND LIMITS OF NATIONAL JURISDICTION UNDER LICENSES ISSUED BY US INTERIOR DEPT. THIS REGIME WOULD PROTECT AGAINST ENCROACHMENT BY US NATIONALS AND TO EXTENT THAT OTHER NATIONS ENACTED SUBSTANTIALLY SIMILAR, RECIPROCATING LEGISLATION, BY SUCH OTHER STATES NATIONALS. IF INTER-NATIONAL NEGOTIATIONS IN PROGRESS LEAD TO LOS TREATY WITH A DIFFERENT LEGAL REGAME AND IF US COMPANIES INCUR FINANCIAL LOSSES UNDER NEW TREATY THESE LOSSES WOULD BE REPAID BY USG AS METCALF BILL IS PRESENTLY WRITTEN
- 12. HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE HAS HELD, AND SENATE INTERIOR COMMITTEE PLANS TO HOLD HEARING JUNE 2 ON THIS PROPOSED LEGISLATION.

CONFIDENTI



## Department of State

## **TELEGRAM**

### CONFIDENTIAL

PAGE Ø6 STATE Ø96469

13. INTRODUCTION OF BILLS AND SUPPORTING STATEMENTS BY MEMBERS OF CONGRESS CAUSED A SIGNIFICANT REACTION DURING MARCH MEETING OF UN SEABED COMMITTEE. CHILE, SUPPORTED BY OTHER LAS AND CERTAIN ARAB STATES, DENOUNCED LEGISLA. TION AND ITS PROPONENTS. AT END OF SESSION, KUWAIT, SUPPORTED BY 13 COUNTRIES, INTRODUCTED A "DRAFT DECISION" WHICH WOULD REAFFIRM ORIGINAL MORATORIUM RES AND WOULD PROHIBIT EXPLORATION ACTIVITIES AIMED AT COMMERCIAL EXPLOITATION OF SEABED BEYOND NATIONAL JURISDICTION. KUWAIT PROPOSAL WAS DEFERRED FOR CONSIDERATION AT JULY-AUGUST 1972 MEETING OF UN SEABED COMMITTEE IN GENEVA. WE OPPOSE KUWAIT DRAFT "DECISION" FOR ESSENTIALLY SAME REASONS AS WE OPPOSED ORIGINAL MORATORIUM RES AS WELL AS ITS DELAYING EFFECT. WE HOPE OTHER COUNTRIES WILL JOIN US IN OUR OPPOSITION. IN MEANT ME UNCTAD HAS PASSED RES SIMILAR TO KUWAIT PROPOSAL (57-14 (US)-17).

- 14. SUCCESS IN EFFORT TO ESTABLISH NEW INTERNATIONAL LOS ACCEPTABLE TO WORLD COMMUNITY DEPENDS LARGELY ON SUFFICIENT PROGRESS BEING MADE IN UN COMMITTEE THIS SUMMER SO AS TO JUSTIFY HOLDING TO 1973 AS DATE FOR LOS CONFERENCE BY INGA IN FALL. IN ADDITION TO CONTINUING DEBATE ON "LIST OF ISSUES" (STATE Ø7Ø197 OF APRIL 22, 1972), DEBATE ON NEW KUWAIT MORATORIUM PROPOSAL COULD BE ENOUGH FOR THOSE COUNTRIES, WHOARE LOOKING FOR AN EXCUSE, TO DELAY WORK OF COMMITTEE, AND THUS JUSTIFY POSTPONEMENT OF CONFERENCE BY UNGA. POSTPONEMENT WOULD RUN RISK OF MAKING AGREEMENT EVEN MORE DIFFICULT, PARTICULARLY SINCE COUNTRIES WOULD INCREASINGLY SEEK UNILATERAL SOLUTIONS TO OCEAN PROBLEMS, THUS LEADING TO CHAOS AND CONFLICT.
- 15. CURRENT EXECUTIVE BRANCH POSITION ON PROPOSED LEGIS-LATION, CONTAINED IN LETTERS TO CONGRESS, SENT SEPTEL. FOLLOWING ELEMENTS ARE PART OF OUR EXISTING POLICY:
- (A) WE DO NOT WISH TO DISCOURAGE EXPLORATION AND EXPLOITATION OF SEABEDS BEYOND 200 METERS DURING NEGOTIA-TING PROCESS, BUT SUCH EXPLORATION AND EXPLOITATION SHOULD BE SUBJECT TO REGIME TO BE AGREED AT LOS CONFERENCE;
- (B) WE DO NOT HAVE LAWS AT PRESENT TIME WHICH GOVERN AMERICAN NATIONALS WISHING TO EXPLORE AND EXPLOIT SEABED

CONFIDENTIAL



### CONFIDENTIAL

PAGE 07 STATE 096469

MINERALS BEYOND CONTINENTAL SHELF.

(C) SHOULD SUCH EXPLORATION AND EXPLOITATION TAKE PLACE, WE BELIEVE IT WOULD BE CONSISTENT WITH RIGHTS CODI-

esto salem a poem .

- (D) WE DO NOT REGARD UNGA RES 2574-D (MORATORIUM RES) AS LEGALLY BINDING, BUT AS POLITICAL FACT TO BE TAKEN INTO ACCOUNT.
- 16. WE RECOGNIZE THAT NOT ALL NATIONS AGREE WITH ABOVE POINTS LISTED AND THAT OUR PUBLIC RESPONSE TO CONGRESS CAN HAVE SUBSTANTIAL IMPACT ON NEGOTIATIONS SCHEDULED FOR THIS SUMMER. IN ADDITION, ANY DEEP SEABED MINING ACTIVITIES BY US COMPANIES MAY HAVE AN EFFECT ON NEGOTIATIONS THIS SUMMER.
- 17. ACTION ADDRESSES ARE REQUESTED TO DISCUSS CONTENTS
  OF PARAS 1 THROUGH 16 OF THIS CABLE WITH HOST GOVTS AND
  SOLICIT GENERAL VIEWS ON ISSUES RAISED HEREIN. POSTS SHOULD
  EMPHASIZE THAT US REGARDS THE INTRODUCTION OF KUWAIT DRAFT
  "DECISION", POSSIBILITY OF A CONFRONTATION BETWEEN DEVELOPED
  AND DEVELOPING COUNTRIES WITH RESPECT TO DEEP SEABED
  MINING, AND POSSIBILITY OF DELAY IN CONVENING OF 1973 CONF
  FERENCE AS SERIOUSLY PREJUDICIAL TO ACHIEVEMENT OF COMPRESHENSIVE INTERNATIONAL AGREEMENT ON LOS. ADDITIONAL INFO
  WILL BE PROVIDED TO HOST GOVTS IF THEY REQUEST. DEPT WOULD
  APPRECIATE RESULTS FROM APPROACHES ASAP.
- [8. FOR BONN, MOSCOW, LONDON, PARIS: LEGAL ADVISER STEVENSON AND ONE REPEACH FROM DEPTS OF DEFENSE, COMMERCE AND INTERIOR WISH DISCUSS HANDLING OF INTERIM POLICY AND OTHER MAJOR LOS ISSUES AT JULY-AUGUST MEETING OF UN SEABED COMMITTEE WITH APPROPRIATE OFFICIALS OF HOST GOVTS AND ARE PREPARED TO VISIT CAPITALS FOR THIS PURPOSE, UNLESS EMBASSY PERCEIVES OBJECTION. BEST TIMING WOULD BE MID-JUNE. WOULD APPRECIATE POSTS! ADVICE ON WHETHER HOST GOVTS WOULD BE PREPARED TO DISCUSS THESE ISSUES IN THIS
- 19. TOKYO. WE ALSO WISH TO HOLD INTENSIVE BILATERAL DISCUSSIONS WITH GOJ, PREFERABLY IN WASHINGTON, AND WOULD

CONFT DENTIAL



CONF

STATE PAGE Ø8 096469

APPRECIATE YOUR ADVICE AS TO TIMING AND SCOPE OF TALKS.

200 ON APRIL 6 DEPT LEGAL ADVISER STEVENSON ACCOMPANIED BY REPS OF COMMERCE AND INTERIORS MET WITH JAPANESE PERMREP TO UN. AMBASSADOR MOTOO OGISO AND TAKED IGUCHI. FIRST SECRETARY AUARANESE MISSION TO DISCUSS PROBLEMS RAISED IN THIS CABLE. JAPANESE MADE FOLLOWING POINTS OF INTEREST

- (A) WHILE JAPAN VOTED AGAINST MORATORIUM RES. IT IS NOT PREPARED TO STATE THAT RES IS NOT LEGALLY BINDING ON UN MEMBERS.
- (B) IT INTERPRETS PRESENT AND NEAR TERM PLANNED ACTIVITY OF MINING COMPANIES AS "EXPERIMENT" NOT COVERED BY MORATORIUM RES NORBBY KUWAIT DRAFT MORATORIUM RES.
- CONSTRUCT BY US ADMINISTRATION FOR CONGRESSIONAL LEGISLATION WOULD RUN SERIOUS RISK OF COUNTER-PRODUCTIVE REACTION IN JULY-AUGUST SEABED COMMITTEE MEETING WITH MAJOR DEVELOPING COUNTRIES! SUPPORT FOR NEW MORATORIUM RES AND PROBABLY MORE EXTREME TYPE OF INTERNATIONAL REGIME IN DEEP SEABED MININGE-A REGIME POTENTIALLY UNFAVORABLE TO PRIVATE ENTERPRISE .
- THEY SUGGEST THAT US TAKE LEAD IN CONSULTING COUNTRIES WHOSE NATIONS ARE PART OF 24 COMPANY CONSORTIUM PLANNING SEABED MINING "EXPERIMENTS" DURING SUMMER WITH VIEW TOWARD COORDINATING POSITIONS FOR JULY. AUGUST MEETING.
- THEY RECOMMENDED AGAINST A FORMAL MEETING OF COUNTRIES WHOSE NATIONS WERE PARTICIPAING IN CONSORTIUM SINCE IF SUCH A MEETING LEAKED, IT WOULD PROMPT FURTHER SOLIDARITY AMONG DEVELOPING COUNTRIES IN OPPOSITION TO INDUSTRIALLY ADVANCED COUNTRIES.

IN LATER, MORE INFORMAL CONVERSATIONS BETWEEN IGUCHI AND RATINER (INTERIOR) AND JOHNSON (COMMERCE), IGUCHI SAID IN HIS VIEW US SUPPORT FOR LEGISLATION WOULD BE A DISASTER FOR WORK OF SEABED COMMITTEE IN JULY-AUGUST MEETING. CP-3. IRWIN

NOTE BY OC/T: POUCHED ALL OTHER DIPL POSTS.

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